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THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Sinpo Corp.

Serial No. 78367114

Otto O. Lee of Intellectual Property Law Group LLP for
Sinpo Corp.

Evelyn Bradley, Trademark Examining Attorney, Law Office
105 (Thomas G. Howell, Managing Attorney).

Before Bucher, Zervas and Kuhlke, Administrative Trademark
Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Sinpo Corp., applicant, has filed an application to
register the mark GINGER CAFE (in standard character form,
CAFE disclaimed) for "restaurants featuring Asian cuisine"
in International Class 43.¹

Registration has been refused under Section 2(d) of
the Trademark Act, 15 U.S.C. §1052(d), on the ground that
applicant's mark, when used in connection with its recited

¹ Application Serial No. 78367114, filed February 12, 2004, under
Trademark Act Section 1(a), 15 U.S.C. §1051(a), asserting July 2,
2003 as the date of first use and January 19, 2004 as the date of
first use in commerce.

services, so resembles the registered mark JINJA (in standard character form) for "restaurants serving food and beverages" in International Class 42,² as to be likely to cause confusion, mistake or deception. The registration includes the following translation statement: The English translation for the word "JINJA" is "GINGER."

When the refusal was made final, applicant appealed and filed a request for reconsideration. The examining attorney denied the request for reconsideration and the appeal was resumed. The appeal is fully briefed. No oral hearing was requested. We reverse the refusal to register.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In*

² Registration No. 2670215, issued December 31, 2002, to Chow Fun Holdings, L.L.C.

re Dixie Restaurants Inc., 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

We turn first to a consideration of the services identified in the application and the cited registration. We must consider the cited registrant's services as they are described in the registration and we cannot read limitations into those services. See *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); and *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1987). If the cited registration describes goods or services broadly, and there is no limitation as to the nature, type, channels of trade or class of purchasers, it is presumed that the registration encompasses all goods or services of the type described, that they move in all channels of trade normal for these goods or services, and that they are available to all classes of purchasers for the described goods or services. See *In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB 1992).

There is no question that applicant's "restaurants featuring Asian cuisine" are encompassed by the "restaurants serving food and beverages" recited in the registration. Accordingly, for purposes of the likelihood of confusion analysis, applicant's services must be

considered legally identical to the services in the cited registration and must be deemed to be sold in the same channels of trade.

In view thereof, the du Pont factors of the similarity of the services and the channels of trade favor a finding of likelihood of confusion as to the cited registration.

We turn now to the first du Pont factor, i.e., whether applicant's mark and registrant's mark are similar or dissimilar when compared in their entireties in terms of appearance, sound, connotation and commercial impression. We make this determination in accordance with the following principles. The test, under the first du Pont factor, is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Furthermore, although the marks at issue must be considered in their entireties, it is well-settled that one feature of a mark may be more significant than another, and it is not

improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). Finally, "[u]nder the doctrine of foreign equivalents, foreign words from common languages are translated into English to determine...similarity of connotation in order to ascertain confusing similarity with English word marks." *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1377 (Fed. Cir. 2005).

The examining attorney argues that GINGER is the dominant feature in applicant's mark inasmuch as CAFE is highly descriptive. Relying on *RE/MAX of America, Inc. v. Realty Mart, Inc.*, 207 USPQ 960, 964 (TTAB 1980), she argues that GINGER is the phonetic equivalent of JINJA and that similarity in sound alone may be sufficient to support a finding of likelihood of confusion. In addition, she applies the doctrine of foreign equivalents and states that JINJA is the Japanese equivalent of GINGER. In support of this argument, the examining attorney submitted excerpts from third-party websites and an online translation dictionary.

In traversing the refusal, applicant argues that JINJA and GINGER CAFE are not similar in sound, appearance or

commercial impression and that, as to connotation, the doctrine of foreign equivalents is not applicable because JINJA in Japanese does not translate to GINGER in English. In support of its position, applicant submitted excerpts from three Japanese/English dictionaries and a declaration from Takashi Hashimoto, a U.S. attorney and native Japanese speaker.

After careful consideration of the evidence of record, we find that confusion has not been demonstrated to be likely based on the doctrine of foreign equivalents. The examining attorney's evidence is not sufficient to establish that JINJA is Japanese for GINGER. The third-party websites are of little to no probative value as to the actual translation of the words GINGER or JINJA. The first one, www.uni-graz.at/~katzner, is from the website of an individual located in Austria who apparently studied chemistry and provides his translations of the word GINGER into various languages. The second, www.tropilab.com, is from the website of a seed exporter. Neither one is an authority on the Japanese or English language and the first one is not even from an English or Japanese speaking country. Moreover, the excerpts from both websites lists "synonyms" for GINGER in several languages and under Japanese is the following translation as explained by

applicant: (1) Chinese characters, which is how Japanese people would write the word; (2) Hiragana, which are the phonetic characters that Japanese people use to phonetically spell Japanese language words only; (3) Katakana, which are the phonetic characters that Japanese people use to phonetically spell out foreign words in Japanese; and (4) in Romanized letters, Shoga, Shoga, Jinja; Myoga, Myoga. Applicant points out that JINJA does not appear in either the Chinese characters or in Hiragana, it only appears in Katakana and the Romanized letters as a "phonetic reference to the English word ginger." Br. p.

12. The excerpt from the online dictionary www.freedict.com translating GINGER from English into Japanese contains the following: GINGER: Jinja-, Shouga. Applicant submitted an excerpt from this online dictionary translating JINJA from Japanese to English and obtained the following result: JINJA: Shinto shrine. Finally, we point to another website excerpt submitted by the examining attorney, www.valley.ne.jp, which appears to be from a foreign website, and is a listing of Japanese words with English words used to assist in memorizing the Japanese word. Next to the listing for JINJA, GINGER is listed in the column titled "English Pronunciation" and SHRINE is listed in the column titled "Japanese Meaning."

In contrast, applicant's evidence unequivocally establishes that the only Japanese translation for GINGER is SHOGA and the only English translation for the Japanese word JINJA is SHRINE. See Takahashi's Pocket Romanized Japanese-English Dictionary (1984) (Jinja: a (Shinto) shrine; Shoga: ginger); Sanseido New Concise Japanese-English Dictionary (1975) (JINJA: a (Shinto) shrine); and Obunsha's Comprehensive English-Japanese Dictionary (1975) (Ginger: Shoga). In his declaration, Mr. Hashimoto states that (1) "the English word 'ginger' is not the proper translation of the Japanese word 'jinja'"; (2) "'jinja' is not the Japanese translation of the word 'ginger'"; and (3) "the English translation of the Japanese word 'jinja' is 'shrine', meaning a Shinto shrine." Declaration of Takashi Hashimoto.

As noted above, the doctrine of foreign equivalents is used to ascertain whether the connotation of the marks is the same, which would impact the determination as to the similarity of the marks. *Palm Bay*, supra, 73 USPQ2d at 1689. This doctrine is not absolute and "where the only similarity between the marks is in connotation, a much closer approximation is necessary...to justify a refusal to register on that basis alone." *In re Sarkli*, 721 F.2d 353, 220 USPQ 111, 113 (Fed. Cir. 1983) (REPECHAGE not

confusingly similar to SECOND CHANCE). See also In re Buckner Enterprises Corp., 6 USPQ2d 1316 (TTAB 1987) (PALOMA, meaning both "dove" and "pigeon," not confusingly similar to DOVE).

It would appear that the examining attorney merely found references to essentially a transliteration for Japanese speakers to assist in the pronunciation of the word ginger, but the doctrine of foreign equivalents applies to equivalency of meaning not transliterations or pronunciation guides.³ We further note that the examining attorney did not present any evidence of the translation from Japanese to English (except for the pronunciation guide where JINJA is translated to mean SHRINE in English). The relevant inquiry for applying the doctrine of foreign equivalents is the translation of the foreign term into English. The facts of this case do not even reach the

³ Even if we were to apply the doctrine, Japanese speakers would have to first assume JINJA is a Japanese transliteration/pronunciation for the English word GINGER, or upon seeing GINGER think of the transliteration or pronunciation guide JINJA. We believe this is simply too attenuated and that potential purchasers familiar with the Japanese language would not make this assumption over the obvious translation which is SHRINE when viewing JINJA or think of the transliteration for GINGER in the Japanese language. Moreover, it is unlikely they would stop and translate rather than simply view the marks as they are. See Palm Bay, supra, 73 USPQ2d at 1377 ("When it is unlikely that an American buyer will translate the foreign mark and will take it as it is, then the doctrine of foreign equivalents will not be applied.") See also In re Tia Maria, Inc., 188 USPQ 524 (TTAB

circumstances set forth in *In re Sarkli*, where the English term was not the exact translation of the foreign term or in *In re Buckner*, where the foreign term translated into two different English terms. Here, there is no question that the only translation for JINJA from Japanese to English is SHRINE.

While we note applicant's theory as to the translation statement in the cited registration, we cannot speculate as to how or why it is there, but we do note that it does not state from which language the mark is being translated. More importantly, decisions by prior examining attorneys are not binding on the Board. In *re Sunmarks Inc.*, 32 USPQ2d 1470 (TTAB 1994). The evidence of record clearly contradicts this statement, at least as to the Japanese language, and the translation statement is not proof of the truth of the matter asserted. *British Seagull Ltd. v. Brunswick Corp.*, 28 USPQ2d 1197, 1200 (TTAB 1993). In addition, the translation statement is not included in the presumptions listed under Section 7(b) of the Trademark Act.

Viewing the marks as they appear, we find that they are substantially different in sound and appearance. While

1975) (TIA MARIA not likely to be translated as "AUNT MARY" by even those familiar with Spanish).

we agree with the examining attorney that GINGER is the dominant element in applicant's mark, we must view the marks in their entirety. GINGER CAFE has four syllables as compared to JINJA's two and the first word in applicant's mark ends in -GER as compared to registrant's -JA. Thus, we do not agree that the marks are similar in sound -- at least not sufficiently alike to find similarity on sound alone. As to connotation, JINJA has no meaning in English and is completely arbitrary as contrasted with GINGER CAFE, which conveys the meaning of both a plant used as a spice, and liveliness. See The American Heritage Dictionary of the English Language (4th ed. 2000) (Ginger: 1. A plant of tropical southeast Asia having yellowish-green flowers and a pungent aromatic rhizome. 2. The rhizome of this plant, often dried and powdered and used as a spice. ...5. *Informal*. Spirit and liveliness, vigor.)⁴ To the extent JINJA would be translated, it would have the entirely different meaning of SHRINE. Finally, the overall commercial impression of these marks is very different.

Accordingly, even though applicant's services are legally identical to the services in the cited registration, we conclude that confusion is unlikely under

⁴ University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., 213 USPQ 594, 596 (TTAB 1982), aff'd, 703 F.2d 1372, 217

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the doctrine of foreign equivalents because the marks are not foreign equivalents. Also, the marks JINJA and GINGER CAFE are otherwise different in sound, appearance and commercial impression.

Decision: The refusal to register is reversed.

USPQ 505 (Fed. Cir. 1983) (Board may take judicial notice of dictionary definitions).